

In the High Court of Punjab and Haryana at Chandigarh

CWP No.9699 of 2018

Date of decision: September 11, 2019

Sukhvir Singh @ Sukha

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Nandan Jindal, Advocate for the
petitioner.

Ms. Lavanya Paul, Assistant Advocate General, Punjab.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner is suffering life sentence for an offence committed under Section 302 read with Section 376 of the Indian Penal Code and lodged in Security Jail, Nabha. He has prayed for parole under Section 3(2) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 for house repair.

His application has been opposed by the respondents on the ground that the commission of offence by the petitioner would put him in the definition of hardcore prisoner as provided under Section 2 (aa) of the Punjab Good Conduct Prisoners (Temporary Release) Amendment Act, 2015 which has been notified on 07.01.2016. According to Section 2 (aa) (i), definition of hardcore prisoner is provided as under:

“(i) an offence of rape with murder under Section 376 read with Section 302 of the Indian Penal Code, 1860.”

Learned counsel for the petitioner has not denied that he is suffering the sentence having been committed under Section 302 read with Section 376 IPC but it is submitted that the offence had allegedly been committed in the year 2008 and he was convicted in the year 2010 whereas amendment has been made in the Act by the Amendment Act, 2015 w.e.f. 07.01.2016. It

is submitted that the said amendment would operate

prospectively and not retrospectively. He has relied upon the decision of the Division Bench of this Court in the case of **Sonu @ Arun Vs. State of Haryana and others** in CRWP No.1078 of 2014 dated 09.02.2015. The said case pertains to State of Haryana much less in regard to the provisions of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988. There was an amendment in the Act in Section 2(aa) (iv) in 2012 by which it is provided that person would be termed as hard core prisoner if he is detected of using cell phone or is found in possession of cell phone/SIM card inside the jail premises. The Division Bench has held that if the offence of possessing the cell phone is committed before coming into force of Amendment Act, 2012, the said offence would not make that convict a hard core prisoner. The judgment relied upon by the petitioner applies to the facts of the case because in this case also the commission of offence is much prior to the amendment and, therefore, such amendment would not apply on the petitioner to make him from prisoner to hardcore prisoner. Even otherwise, learned counsel for the petitioner has submitted that the petitioner has availed 11 paroles in the past and always surrendered in time.

Thus, keeping in view the facts and circumstances of the case, the present petition is hereby allowed and the petitioner is directed to be released on parole of three weeks for house repair on his furnishing bail bonds to the District Magistrate, Patiala, who would impose necessary conditions to ensure the surrender of the petitioner in time to the jail authorities.

(RAKESH KUMAR JAIN)
JUDGE

September 11, 2018

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Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No